UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

LISA LEWIS-RAMSEY 1008 So. 10th Street Clinton, IA 52732 and DEBORAH K. JONES 2330 12th Ave South Clinton, IA 52733 on behalf of themselves and all others similarly situated, Plaintiff, vs. THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY d/b/a Good Samaritan Society 4800 W 57th Street Sioux Falls, SD 27108 Defendant.	CASE NO. JUDGE MAGISTRATE JUDGE **PLAINTIFFS' COMPLAINT** (Jury Demand Endorsed Herein)

Now comes Plaintiffs Lisa Lewis-Ramsey and Deborah K. Jones, by and through counsel, and for their Complaint against The Evangelical Lutheran Good Samaritan Society, d/b/a Good Samaritan Society ("Good Samaritan"), state and allege the following:

INTRODUCTION

1. This is a "collective action" instituted by Plaintiffs as a result of Defendant's practices and policies of not paying its non-exempt home health aides, including Plaintiffs, overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over 40 each workweek, in violation of the Fair Labor Standards Act

("FLSA"), 29 U.S.C. 201-219, as well as a "class action" pursuant to Fed. R. Civ. P. 23 to remedy violations of the Iowa Wage Payment Statute, Iowa Code §§ 91A.

2. On October 1, 2013, the U.S. Department of Labor issued the Home Care Final Rule[1] ("Final Rule") to extend minimum wage and overtime protections to almost 2 million home care workers. The Final Rule was challenged in federal court, but on August 21, 2015, the District of Columbia Circuit Court of Appeals in *Home Care Association of America v. Weil*, 78 F.Supp. 3d 123 (D.C.Cir. 2015), issued a unanimous opinion affirming the validity of the Final Rule. This opinion upholding the Home Care Final Rule became effective on October 13, 2015, when the Court of Appeals issued its mandate. The Home Care Final Rule had an effective date of January 1, 2015.[2]

3. Under the Final Rule, companies that provide home health care services to customers are required to pay employees overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over 40 each workweek. Despite these requirements, Defendant has failed to pay its home health aides any overtime compensation since January 1, 2015.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. 1331 and 29 U.S.C. 216(b).

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[1] Application of the Fair Labor Standards Act to Domestic Service, Fed. Reg. 60453, 60557 (Oct. 1, 2013) (amending 29 C.F.R. Part 552).
[2] http://www.dol.gov/whd/homecare/litigation.htm

5. Venue is proper pursuant to 28 U.S.C. 1391(b) because Defendant conducts business throughout this District and Division and because a substantial part of the events and omissions giving rise to the claims occurred in this District and Division.

PARTIES

6. At all times relevant herein, Plaintiffs were citizens of the United States, and residents of Clinton County, Iowa.

7. At all times relevant herein, Plaintiffs were employees within the meaning of 29 U.S.C. 203(e) and Iowa Code §§ 91A, et seq.

8. At times relevant herein, Defendant conducted systematic and continuous business, and maintained at least one physical location, in Clinton County, Iowa, conducting business as the "Good Samaritan Society."

9. At all times relevant herein, Defendant was an employer within the meaning of 29 U.S.C. 203(d) and Iowa Code §§ 91A, et seq.

10. At all times relevant herein, Defendant was an enterprise within the meaning of 29 U.S.C. 203(r).

11. At all times relevant herein, Defendant was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. 203(s)(1).

12. At all times relevant herein, Plaintiffs were employees engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. 206-207.

13. Written consents to join this action as to Count I, as and when executed by other individual plaintiffs, will be filed pursuant to 29 U.S.C. 216(b).

FACTUAL ALLEGATIONS

14. Defendant is a home health care business.

15. Upon information and belief, Defendant provides home health care services in twenty four (24) states as the "Good Samaritan Society," including Iowa.

16. Plaintiff Lewis-Ramsey has been employed by Defendant in Clinton, Iowa since December 1, 2013.

17. Plaintiff Jones has been employment by Defendant in Clinton, Iowa since July 18, 2014.

18. At all times relevant herein, Plaintiffs have been employed by Defendant as home health aides.

19. Other similarly-situated employees were employed by Defendant as home health aides.

20. Plaintiffs and other similarly-situated home health aides were employed by Defendant as non-exempt employees under the FLSA.

21. Plaintiffs and other similarly-situated home health aides were paid an hourly wage.

(Failure to Pay Overtime Compensation)

22. Plaintiffs and other similarly-situated home health aides worked more than 40 hours per week, but Defendant failed to pay them overtime compensation for the hours they worked over 40 each workweek.

23. Rather than paying overtime compensation, Plaintiffs and other similarly-situated home health aides were only paid straight time for the hours they worked over 40 each workweek.

(Defendant Willfully Violated the FLSA)

24. Defendant knowingly and willfully engaged in the above-mentioned violations of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

25. Plaintiffs bring Count I of this action on their own behalf pursuant to 29 U.S.C. 216(b),[3] and on behalf of all other persons similarly situated who have been, are being, or will be adversely affected by Defendant's unlawful conduct.

25. The class which Plaintiffs seek to represent and for whom Plaintiffs seek the right to send "opt-in" notices for purposes of the collective action, and of which Plaintiffs are themselves members, is composed of and defined as follows:

> All current and former home health aides employed by The Evangelical Lutheran Good Samaritan Society at any time between January 1, 2015 and the present.

26. The amount of overtime hours Plaintiffs and other similarly situated home health aides worked are reflected on their time sheets and pay stubs.

27. Plaintiffs estimate that on average, they worked approximately forty (40) overtime hours per week.

28. Plaintiffs are unable to state at this time the exact size of the potential class, by upon information and belief, avers that is consists of at least several hundred persons.

29. This action is maintainable as an "opt-in" collective action pursuant to 29 U.S.C. 216(b) as to claims for unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA. In addition to Plaintiffs, numerous current and former employees are similarly situated with regard to their wages and claims for unpaid wages and damages.

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[3] Plaintiffs' Consent Forms are attached hereto.

Plaintiffs are representative of those other employees and is acting on behalf of their interests as well as their own in bringing this action.

30. These similarly-situated employees are known to Defendant and are readily identifiable through Defendant's payroll records. These individuals may readily be notified of this action, and allowed to opt in pursuant to 29 U.S.C. 216(b), for the purpose of collectively adjudicating their claims for unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring Count Two of this action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of themselves and all other members of the class defined as

> All current and former home health aides employed by The Evangelical Lutheran Good Samaritan Society in Iowa at any time between January 1, 2015 and the present.

32. The class is so numerous that joinder of all class members is impracticable. Plaintiffs are unable to state at this time the exact size of the potential class, but upon information and belief avers that is consists of at least 50 persons.

33. There are questions of law or fact common to the Class, including but not limited to the following:

> (a) whether Defendant failed to pay overtime compensation to its home health aides for hours worked in excess of 40 each workweek; and
>
> (b) what amount of monetary relief will compensate Plaintiffs Lisa Lewis and Deborah Jones and other members of the class for Defendant's violation of Iowa Code §§ 91A, et seq.

34. The claims of the named Plaintiffs are typical of the claims of other members of the Class. Named Plaintiffs' claims arise out of the same uniform course of conduct by

Defendant, and are based on the same legal theories, as the claims of the other Class members

31. Named Plaintiffs Lisa Lewis-Ramsey and Deborah K. Jones will fairly and adequaltely protect the interests of the Class. Their interests are not antagonistic to, but rather are in unison with, the interests of the other Class members. The named Plaintiffs' counsel has broad experience in handling class action wage-and-hour litigation, and is fully qualified to prosecute the claims of the Class in this case.

32. The questions of law or fact that are common to the Class predominate over any questions affecting only individual members. The primary questions that will determine Defendant's liability to the Class, listed above, are common to the class as a whole, and predominate over any questions affecting only individual class members.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring Class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys' fees, and demands on court resources. Many Class members' claims are sufficiently small that they would be reluctant to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case pursuant to Fed. R. Civ. P. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

COUNT ONE
(Fair Labor Standards Act Violations)

34. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

35. Defendant's practice and policy of not paying Plaintiffs and other similarly-situated home health aides overtime compensation at the rate of one and one-half times their

regular rate of pay for the hours they worked over 40 each workweek violated the FLSA, 29 U.S.C. 207.

36. By engaging in the above-described practices and policies, Defendant willfully, knowingly and/or recklessly violated the provisions of the FLSA.

37. As a result of Defendant's practices and policies, Plaintiffs and other similarly-situated employees have been damaged in that they have not received wages due to them pursuant to the FLSA.

COUNT TWO
(Violations of Iowa Wage Payment Statute)

38. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

39. Defendant's practice and policy of not paying Plaintiffs and other similarly-situated home health aides overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over 40 each workweek violated the Iowa Wage Payment Statute, Iowa Code §§ 91A, *et seq.*

40. By failing to pay Plaintiffs and other similarly-situated employees' overtime compensation, Defendant willfully, knowingly and/or recklessly violated the provisions of the Iowa Wage Payment Statute, Iowa Code §§ 91A, *et seq.*

41. As a result of Defendant's practices and policies, Plaintiffs and other similarly-situated employees have been damaged in that they have not received wages due to them pursuant to the Iowa Wage Payment Statute, Iowa Code §§ 91A, *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and all those similarly situated, collectively pray that this Honorable Court:

A. Issue an order permitting this litigation to proceed as a collective action and certifying the class pursuant to Fed. R. Civ. R. 23(a) and (b)(3);

B. Order prompt notice, pursuant to 29 U.S.C. 216(b), to all class members that this litigation is pending and that they have the right to "opt in" to this litigation;

C. Award Plaintiffs and the class they represent actual damages for unpaid wages;

D. Award Plaintiffs and the class they represent liquidated damages equal in amount to the unpaid wages found due to Plaintiffs and the class;

E. Award Plaintiffs and the class they represent pre- and post-judgment interest at the statutory rate;

F. Award Plaintiffs and the class they represent attorneys' fees, costs, and disbursements; and

G. Award Plaintiffs and the class they represent further and additional relief as this Court deems just and proper.

Respectfully submitted,

/s/ Harley C Erbe

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JURY DEMAND

Plaintiffs demand a trial by jury on all eligible claims and issues.

/s/ Harley C. Erbe______________
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